

as being anticipated by Shaftner (U.S. Patent No. 5,308,188); and rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Shaftner in view of Grosh (U.S. Patent No. 3,974,599).

Applicant has amended claim 1 to incorporate the features of claim 11. Thus, the Section 102(b) rejection is moot and should be withdrawn. With regard to the Section 103(a) rejection, the Examiner asserted that Shaftner discloses the claimed invention except for the upper surface of the body being substantially planar. The Examiner relied upon Grosh as disclosing an upper surface of a ramp member that is substantially planar. Applicant respectfully traverses the Examiner's Section 103(a) rejection, for the following reasons.

Shaftner discloses a ramp for a temporarily-elevated utility access hole. As shown in Fig. 2 of the reference, the ramp has a flat lower surface and a sloped upper surface. Shaftner further discloses that the ramp can be molded in different thicknesses and used singly or stacked on top of one another. (Col. 1, lines 50-52).

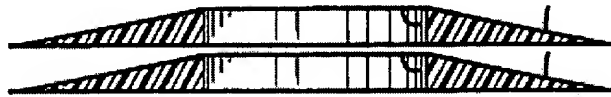
Grosh discloses an underground, reinforced plastic enclosure 10 that includes a body 15 that is suitable as an enclosure for an underground utility, and a top cap 25 that is secured to the upper portion of the body 15 (roadway structure) by means of brackets and bolts as shown in Fig. 2. Top cap 25 has a rectangular configuration and is formed with a central cylindrical opening 26. (Col. 2, lines 41-54; and col. 4, lines 44-46).

In contrast, the present invention recited in claim 1, and claims 2-7 and 10, at least by virtue of dependence, recite a combination of elements, including at least one resilient riser provided between the lower surface of the collar body and an upper surface of the roadway pavement, the resilient riser having a thickness so that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the

roadway pavement, wherein the lower surface of the collar body is planar and is in planar alignment with a planar upper surface of the resilient riser.

Neither Shaftner nor Grosh disclose the combination of elements recited in the claims, including the resilient riser, wherein the lower surface of the collar body is planar and is in planar alignment with a planar upper surface of the resilient riser. ★

Shaftner fails to disclose a resilient riser provided between the lower surface of the collar body and the roadway pavement. Instead, the reference discloses that the ramp (collar body) may have a variety of thicknesses or be stacked upon another ramp. Since the ramps of Shaftner have sloped upper surfaces and planar lower surfaces, stacking the ramps would look like the following Figure (which shows the ramp shown in Fig. 2 of Shaftner stacked on top of itself).



Even if one construes the lower ramp to be a “riser” and the upper ramp to be the “collar body,” then the “riser” of Shaftner does not have a planar upper surface, and the lower surface of the “collar body” is not in planar alignment with the upper surface of the “riser,” as required in the claims of the present application.

Grosh fails to disclose or suggest a resilient riser altogether. Thus, it is impossible for this reference to disclose a resilient riser, wherein the lower surface of the collar body is planar and is in planar alignment with a planar upper surface of the resilient riser. }

In light of the above, Applicant submits that Shaftner and Grosh, whether taken alone or in any reasonable combination, fail to disclose or suggest the combination of elements recited in claims 1-7 and 10, including the resilient riser, wherein the lower surface of the collar body is planar and is in planar alignment with a planar upper surface of the resilient riser. Thus, these

claims are allowable over these references. Applicant, therefore, respectfully requests that the Examiner reconsider and withdraw the Section 103(a) rejection of these claims.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-7 and 10 in condition for allowance. Applicant submits that the proposed amendments of claim 1 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

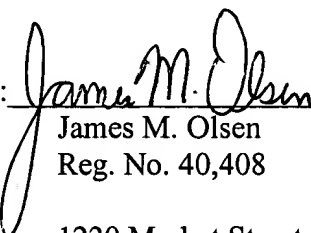
In view of the foregoing remarks, Applicant submits that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 03-2775. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

Dated: October 31, 2002

By:   
James M. Olsen  
Reg. No. 40,408  
1220 Market Street  
P.O. Box 2207  
Wilmington, DE 19899  
Telephone (302) 888-6256  
Facsimile (302) 255-4256

**EXHIBIT A - Amendments to the Claims of Serial No. 09/549,002**

**IN THE CLAIMS:**

Please cancel claim 11, without prejudice or disclaimer of the subject matter thereof, and amend claim 1, as follows:

1. (Three Times Amended) A system for protecting a roadway structure from damage caused by vehicular traffic and vice versa, the roadway structure extending above a roadway pavement, the system comprising:

a resilient, replaceable collar having a body with upper and lower surfaces, an opening provided therethrough and sized to accommodate the outer periphery of the roadway structure, and sloped side walls extending downward from the upper surface of the body towards the lower surface of the body, wherein the upper surface of the body is substantially planar and is in substantially planar alignment with an upper surface of the roadway structure; and

at least one resilient riser provided between the lower surface of the collar body and an upper surface of the roadway pavement, the resilient riser having a thickness so that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the roadway pavement, wherein the lower surface of the collar body is planar and is in planar alignment with a planar upper surface of the resilient riser.

SYSTEM  
riser  
between collar  
& road  
thickness  
Collar  
body  
opening  
upper  
&  
lower  
surfaces  
upper  
surface  
planar  
sloped  
side  
walls  
from  
upper  
to  
lower  
surface  
Height = Height of Road Structure